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United States

Circuit Court of Appeals

For the Ninth Circuit.

ALASKA PACIFIC FISHERIES, a Corporation,
Plaintiff in Error,
vs.

THE TERRITORY OF ALASKA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

Filed

JAN 2 6 1916

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Counsel.]
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Alaska,
Attorneys for Plaintiff in Error.
JOHN H. COBB, Juneau, Alaska,
Attorney for Defendant in Error.

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1325-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES,

Defendant.

Praecipe [for Transcript of Record].

Kindly prepare certified copies for transmission to the United States Circuit Court of Appeals in connection with your return of the Writ of Error herein as follows: Original Complaint, Demurrer to Complaint, Answer, Reply, Findings of Fact and Conclusions of Law, and Judgment (all in one), Bill of Exceptions, Petition for Writ of Error and Order allowing same, Assignment of Errors, Bond on Writ of Error, Writ of Error and Citation on Writ of Error. Two Opinions.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendant.

*Page-number appearing at foot of page of original certified Record.

Filed in the District Court, District of Alaska,
First Division. Dec. 10, 1915. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [1a*]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1325-A.

THE TERRITORY OF ALASKA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

Complaint.

The above-named plaintiff complaining of the
above-named defendant, for cause of action alleges:

I.

The defendant is a corporation, duly incorporated,
and owning property and engaged in the fishing busi-
ness in the Territory of Alaska.

II.

That during the month of June, 1915, and con-
tinuously up to the present time, the defendant was
engaged in and prosecuting and attempting to prose-
cute the business of fishing by means of fish-traps
situate in the waters of Alaska.

That during all said period the defendant was en-
gaged in operating twenty-two (22) fish-traps, the
precise locations of which said traps are to the plain-
tiff unknown, but they are all within the waters of
Southeastern Alaska and subject to the tax herein-
after alleged.

III.

That by an act of the Alaska legislature, approved [2] April 29th, 1915, entitled "An act to establish a system of taxation, create revenue, and provide for collection thereof, for the Territory of Alaska, and for other purposes; and to amend an act entitled "An act to establish a system of taxation, create revenue and provide for collection thereof for the Territory of Alaska, and for other purposes," approved May 1, 1913, and declaring an emergency,"—each and every one of said traps became and is subject to the payment of a license tax of One Hundred Dollars (\$100) each for the year 1915, which said tax, by the terms of said act, became due and payable on the 1st day of July, 1915.

IV.

That the defendant, though prosecuting the business aforesaid for the current season of fishing, has failed, neglected and refused to pay said license tax or any part thereof.

WHEREFORE, plaintiff sues and prays judgment for the sum of Twenty-two Hundred Dollars (\$2,200), with interest thereon at the rate of eight per cent per annum from the 1st day of July, 1915, and all costs and disbursements herein incurred.

J. H. COBB,

Chief Counsel for the Territory of Alaska. [3]

United States of America,
Territory of Alaska,—ss.

J. H. Cobb, being first duly sworn, on oath deposes and says: I am chief counsel for the Territory of

Alaska. The above and foregoing complaint is true as I verily believe.

J. H. COBB.

Subscribed and sworn to before me this 7th day of July, A. D. 1915.

[Notarial Seal]

E. L. COBB,

Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Filed in the District Court, District of Alaska, First Division. Jul. 10, 1915. J. W. Bell, Clerk.
By John T. Reed, Deputy.

[Endorsed]: Original No. ——. In the District Court for the Territory of Alaska, Division No. 1, at Juneau. The Territory of Alaska, Plaintiff, vs. Alaska Pacific Fisheries, a Corporation, Defendant. Complaint. J. H. Cobb, Chief Counsel for the Territory of Alaska. [4]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

Demurrer.

Comes now the above-named defendant and demurs to the complaint of the plaintiff herein, and for cause of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the act of the Alaska legislature, approved April 22, 1915, referred to in the complaint and upon which the alleged liability of the defendant is based, is invalid and void.

III.

That the act of the Alaska legislature approved April 22, 1915, referred to in the complaint, is in conflict with the Organic Act, the Laws of the United States and the Constitution of the United States, and is such that the territorial legislature did not possess the power and authority under the Organic Act to enact the same. [5]

IV.

That the tax attempted to be laid by the act referred to in the complaint is not uniform upon the same class of subjects in this that an attempt is made to tax fish-traps and gill-nets while seines are not taxed. Thereby imposing a burden on those fishing by means of traps and gill-nets, not imposed upon those fishing by means of seines, and the act is for that reason void to the extent that fish-traps are sought to be taxed.

V.

That the act referred to in the complaint is void for the reason that it is an attempt to lay and collect a tax without any reference to the value of the thing taxed, contrary to the provisions of the Organic Act in that regard.

VI.

That the tax imposed by the act, referred to in the complaint, is in fact a specific tax on property, and as such is levied without any reference to the value of the property sought to be taxed, to wit, the fish-traps, contrary to the provisions of the Organic Act in that regard.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant.

Due service by copy admitted this 27th day of July, 1915.

J. H. COBB,

Attorney for Plaintiff.

Filed in the District Court, District of Alaska,
First Division. Jul. 29, 1915. J. W. Bell, Clerk.
By —————, Deputy [6]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case. No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

Answer.

Comes now the defendant and for answer to the complaint of the plaintiff herein, admits, denies and alleges as follows:

I.

The defendant admits that it is a corporation duly

incorporated and owning property in the Territory of Alaska, and engaged in the fishing business in said Territory, as said fish business is hereinafter more particularly described.

II.

The defendant denies that during the month of June, 1915, or at any other time, it was engaged in prosecuting, or attempting to prosecute, the business of fishing by means of fish-traps, situate in the waters of Alaska or elsewhere, and in this connection the defendant avers:

That it is the owner of salmon cannaries, situate in Southeastern Alaska, and that it is engaged in catching, packing and canning salmon and that in connection with the operation of such canneries it catches, packs, cans and ships salmon; that it is the owner of eighteen (18) fish-traps, situate in the waters of Southeastern Alaska, and that each [7] and all of said fish-traps are appliances used by it in connection with its operation of said canneries and that said traps and all of them are part of the cannery property used exclusively for the purpose of catching fish to be canned in the defendant's canneries;

That the defendant is not engaged in the business of operating fish-traps, or in the business of fishing by means of fish-traps; that it does not sell any of the fish caught in any of its said traps until the same have been canned at its said canneries and makes no use whatsoever of said fish-traps, except in the operation of its said canneries.

Further answering paragraph two (2) of the com-

plaint of plaintiff herein, the defendant denies that it is the owner of, or that it operates, twenty-two (22) fish-traps but avers that it is the owner of eighteen (18) fish-traps used by it as in this paragraph above specified. In this connection the defendant further avers:

That it has complied with all the provisions of chapter three, title seven of the Compiled Laws of Alaska, relating to fish and fisheries, including the provisions of sections 259, 260, 261, 262, 263, 264, 265, 267, 268, 269, 270, 271, 272, 273, 274, 275 and 275-a, and has paid license taxes on its business and output as by said act of Congress required, and has in all respects complied therewith.

III.

Answering paragraph three (3) of plaintiff's complaint the defendant avers:

That it admits that the territorial legislature of the Territory of Alaska passed the act referred to in said [8] paragraph, but the defendant denies that it is the owner of any fish-traps subject to the payment of any license tax under said act, and in this connection, the defendant further avers:

That said act is invalid and void, among others, for the reasons following:

First. That said act attempts to alter, amend and change the fish laws passed by the Congress of the United States, prior to the adoption of the Organic Act and in force at the time said act was adopted, which said attempt is contrary to the provisions of said Organic Act and renders the act void, as an act passed without authority.

Second. That the purported license tax sought to be collected in this action is not a license but a tax and is sought to be collected in violation of the provisions of the Organic Act of the Territory of Alaska in this that the act is a revenue measure pure and simple, and that the license sought to be collected *are* not sought to be collected for the purpose of regulation, but for the purpose of taxation only; that the amount imposed is far in excess of the amount required to issue the license, to regulate and inspect the thing sought to be licensed and to do such other things as might be done by the Territory under its police powers; and that the express object of the act is not regulation, but taxation, and as such is in violation of the provisions of the Organic Act, which requires, "That all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessment shall be according to the actual value thereof. No tax shall be levied for territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year." [9]

And further that said attempt to tax is in violation of the last quoted provision of the Organic Act in this, the natural conditions in Southeastern Alaska are such that it is practical to catch salmon by means of traps and gill-nets, and such that a seine cannot be used, while the natural conditions in Western Alaska are such that it is not practical to catch fish by means of traps and gill-nets, but the seine is the device used, in the last mentioned locality for that purpose. There are a great many sal-

mon canneries in Southeastern Alaska and the fish canned in these canneries are nearly all caught by means of traps and gill-nets. There are also a large number of canneries in Western Alaska and the fish there canned are nearly all caught by the use of seines.

That the defendant owns three canneries, all of which are situate in Southeastern Alaska, and all of which are so situate that the fish canned at said canneries must be caught either by means of a trap or gill-net, since the natural conditions in the Territory from which these fish must come do not admit of the use of a seine.

That to the Westward, along the Alaskan coast, different conditions prevail; that the practical methods of fishing there is by means of seines; that in that locality seines are almost exclusively used by the canneries in procuring fish to be canned and packed at the canneries there situate; that if this act should be enforced and the defendant be required to pay the tax therein assessed against it because of the fact that it employs fish-traps and gill-nets in order to supply its canneries with fish, it would be greatly handicapped in meeting in the market its competitors, who [10] operate canneries to the westward along the Alaskan coast and in the Alaskan waters, where the use of seines is practical and where the fish are caught and the canneries supplied by means of the use of seines.

That said tax for the reasons stated is not uniform upon the same class of subjects; is not assessed according to the actual value thereof and is levied

without reference to whether it is in excess of one per cent upon the assessed valuation of the property, and without making any assessment whatsoever, and that as to many of the traps owned by the defendant, the tax of one hundred (\$100) dollars per trap greatly exceeds one per cent upon the actual value of said traps in that some of the defendant's traps are not worth to exceed twenty-five hundred (\$2,500) dollars.

That the defendant cannot supply its canneries with fish except by using traps and gill-nets, which are taxed under the provisions of the act referred to in the complaint, while its competitors operating canneries in Western Alaska supply their canneries with fish by the use of seines, the use of which the natural conditions in that locality permit; that the defendant and all others similarly situated are obliged to sell their fish in the same market where the fish canned by the canneries situate in Western Alaska is marketed. That by reason of these facts the defendant is denied the privilege of fishing without paying the tax on trap and gill-nets exacted by said act, while its competitors are allowed to exercise the privilege of fishing freely;

That by reason thereof, as well as the other matters and things hereinbefore set forth, said act is in violation of the fourteenth amendment to the Constitution of the United States. [11]

IV.

Replying to paragraph four of the plaintiff's complaint, the defendant denies that it is prosecuting the business therein referred to, and avers that it is

engaged in the business hereinbefore set forth, prosecuted in the manner hereinbefore set forth, but admits that it has failed and refuses to pay the license tax sought to be collected by this action, or any part thereof, for the reasons herein stated.

And for further defense to the allegations of the complaint herein, the defendant avers:

That the act upon which the complaint herein is based and under which the prosecution is had was enacted or claimed to be enacted by the legislature of the Territory of Alaska in the year 1915.

That the session of the legislature which passed or claimed to have passed the above-entitled act convened on the first Monday in March, 1915, in the city of Juneau, Alaska, and continued in session for a period of sixty days, during which period they failed to pass and enact the act above referred to, and that said act, upon which the prosecution herein is had, was passed after the legislature had been in session for more than sixty days, and that the Governor of the Territory of Alaska did not call an extraordinary session to pass said act.

WHEREFORE, the defendant prays that the plaintiff's complaint be dismissed; that it take nothing by reason thereof; and that it have and recover from the plaintiff its costs and disbursements herein incurred.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant. [12]

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Aug. 26, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy.

ORIGINAL No. 1325-A. In the District Court for the Territory of Alaska, Division No. 1. The Territory of Alaska, Plaintiff, vs. Alaska Pacific Fisheries, a Corporation, Defendant. Answer. Hellenthal & Hellenthal, Attorneys for Defendant. Office: Juneau, Alaska.

Due service by copy of the within admitted this 26th day of Aug. 1915.

J. H. COBB,
Attorney for Plaintiff. [13]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

Reply.

Now comes the plaintiff by J. H. Cobb, Chief Counsel for the Territory of Alaska, and for reply to the affirmative answer of the defendant alleges:

The plaintiff denies all and singular the allegations in said affirmative answer contained.

J. H. COBB,
Chief Counsel.

United States of America,
Territory of Alaska,—ss.

J. H. Cobb being first duly sworn on oath deposes

and says: I am the chief counsel for the Territory of Alaska. The above and foregoing reply is true as I verily believe.

J. H. COBB.

Subscribed and sworn to before me this 11th day of November, 1915.

E. L. COBB,

Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Filed in the District Court, District of Alaska, First Division. Nov. 13, 1915. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [14]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1325-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

Judgment.

This cause came on regularly for trial upon the complaint, answer and reply; and thereupon came the plaintiff by Mr. J. H. Cobb, and the defendant by Messrs. Hellenthal & Hellenthal, and all parties announced ready for trial; and filed a stipulation in writing waiving a jury and submitting the cause to the Court; and the respective parties also made, signed and filed their stipulation in writing as to all

facts in the case, of which stipulation the following also was a part to wit: "If the Court shall find under the law that judgment should go for the plaintiff, said judgment shall be for the sum of Nineteen Hundred Dollars (\$1,900) with interest thereon from July 1st, 1915, from which judgment a writ of error or appeal may be prosecuted as provided by law"; The said facts so stipulated are as follows, to wit:

I.

The defendant, The Alaska Pacific Fisheries, is a corporation duly incorporated and owning property and doing business in the Territory of Alaska.

II.

The said defendant is the owner of 19 fish-traps situate within the waters of Southeastern Alaska, which [15] said traps and each and all of them it operated during the fishing season of 1915, to wit, during the months of June, July and August, taking fish therein.

III.

That none of the fish taken by the defendant in any one of its said fish-traps operated by it as afore-said, was sold by the defendant prior to being canned, but all the fish so caught were utilized by the defendant in connection with the operation of certain canning plants owned by it in which said fish were canned and thereafter sold as canned salmon, and the defendant has not otherwise engaged in the fish-trap business.

IV.

That some of the canneries in the Territory of Alaska are so situate that because of natural con-

ditions they are obliged to supply the fish canned by resorting to the use of fish-traps, while others are so situate because of natural conditions that the fish can be supplied in no other practical manner except by the use of gill-nets, while still others are so situate that the fish cannot be supplied except by the use of seines; that the canneries of the defendant are so situate that seines cannot be practically used in connection with the catching of the fish canned or in connection with the furnishing of the fish supplied for its canneries, but it is obliged to resort to the use of fish-traps for that purpose.

V.

The defendant has complied with all the provisions of chapter 3, title 7, of the Compiled Laws of the Territory of Alaska relating to fish and fisheries including the provisions of sections 259 to 275-A inclusive, and has paid the license tax provided for by said sections. [16]

VI.

The defendant has not paid the tax sued for in this action for 1915, or any part thereof.

VII.

The second session of the legislature which passed the act which forms the basis of this action, to wit, chapter 76, Session Laws of Alaska, 1915, convened on the 1st day of March, 1915, at 12 o'clock noon; that on the 29th day of April, 1915, said legislature adjourned, *sine die*, at 12 o'clock midnight, according to the official time-piece of said legislature, that is to say, the clocks hanging in the halls of the two Houses of the legislature were stopped or turned

back by the sergeant-at-arms just prior to the hour of 12 o'clock midnight of April 29th, 1915, and thereafter between the hours of 3 and 4 o'clock A. M., sun time, of April 30th, 1915, while the clocks in said halls of the legislature still indicated prior to midnight, being stopped or turned back as aforesaid, the said act, namely chapter 76 of the Session Laws of Alaska, 1915, was finally passed by both Houses of the legislature and approved by the Governor and was enrolled and filed in the office of the Secretary of State for the Territory as it now appears in the printed volume of the Session Laws of Alaska, 1915, chapter 76; that the Governor of the Territory of Alaska did not call an extra session to pass said act.

VIII.

Some of the said traps of defendant are worth upwards of \$10,000 and some are worth not to exceed \$1,000.

And from the foregoing the Court finds as facts herein the matters and things in said stipulation, contained; and from the facts so found and the stipulation aforesaid the Court concludes as a matter of law that the plaintiff is entitled to judgment for the sum of Nineteen Hundred [17] and Sixty-three Dollars (\$1,963) and costs, to which ruling of the Court the defendant then and there excepted.

IT IS THEREFORE CONSIDERED BY THE COURT, and is so ordered and adjudged that the plaintiff, the Territory of Alaska, do have and recover of and from the defendant the Alaska Pacific Fisheries, a corporation, the sum of Nineteen Hundred and Sixty-three Dollars (\$1,963) with interest

thereon from the date hereof at the rate of eight per cent per annum, and all costs incurred, for all of which let execution issue.

Defendant is allowed thirty days from this date in which to file bill of exceptions.

Dated this 1st day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,
First Division. Dec. 2, 1915. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [18]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case. No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that the defendant herein, duly and regularly and within the time prescribed therefor, filed its demurrer, which is in words and figures as follows:

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Case No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES,

a Corporation,

Defendant.

Demurrer [in Bill of Exceptions].

Comes now the above-named defendant and demurs to the complaint of the plaintiff herein, and for cause of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the act of the Alaska Legislature, approved April 22, 1915, referred to in the complaint and upon which the alleged liability of the defendant [19] is based, is invalid and void.

III.

That the act of the Alaska legislature approved April 22, 1915, referred to in the complaint, is in conflict with the Organic Act, the Laws of the United States and the Constitution of the United States, and is such that the territorial legislature did not possess the power and authority under the Organic Act to enact the same.

IV.

That the tax attempted to be laid by the act referred to in the complaint is not uniform upon the same class of subjects in this that an attempt is made to tax fish-traps and gill-nets, while seines are not taxed. Thereby imposing a burden on those fishing by means of traps and gill-nets, not imposed upon those fishing by means of seines, and the act is for that reason void to the extent that fish-traps are sought to be taxed.

V.

That the act referred to in the complaint is void for the reason that it is an attempt to lay and collect a tax without any reference to the value of the thing taxed, contrary to the provisions of the Organic Act in that regard.

VI.

That the tax imposed by the act, referred to in the complaint, is in fact a specific tax on property, and as such is levied without any reference [20] to the value of the property sought to be taxed, to wit, the fish-traps, contrary to the provisions of the Organic Act in that regard.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant.

That thereafter and on the 11th day of August, A. D., 1915, this cause came on regularly for hearing upon the demurrer so filed to the complaint, both parties being represented by counsel, and the matter having been fully argued and presented to the Court, the Court overruled said demurrer, to which ruling and order of the Court the defendant, by counsel,

then and there excepted, which exception was then and there allowed by the Court.

BE IT FURTHER REMEMBERED that thereafter the defendant filed its answer, to which a reply was duly filed by the plaintiff, whereupon the cause being at issue upon a question of fact, the parties duly and regularly by a stipulation in writing waived a jury, and thereupon the parties duly and regularly entered into a stipulation as to all the facts in the case, which stipulation is in words and figures as follows:

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES,

a Corporation,

Defendant.

Stipulation [of Facts].

It is hereby stipulated and agreed by and between the plaintiff and defendant, by their respective [21] counsel, that this case shall be tried upon the following agreed facts:

I.

The defendant, The Alaska Pacific Fisheries, is a corporation duly incorporated and owning property and doing business in the Territory of Alaska.

II.

The said defendant is the owner of 19 fish-traps situate within the waters of Southeastern Alaska, which said traps and each and all of them it operated during the fishing season of 1915, to wit, during the months of June, July and August, taking fish therein.

III.

That none of the fish taken by the defendant in any one of its said fish-traps operated by it as aforesaid, was sold by the defendant prior to being canned, but all the fish so caught were utilized by the defendant in connection with the operation of certain canning plants also owned by it in which said fish were canned and thereafter sold as canned salmon, and the defendant has not otherwise engaged in the fish-trap business.

IV.

That some of the canneries in the Territory of Alaska are so situate that because of natural conditions they are obliged to supply the fish canned by resorting to the use of fish-traps, while others are so situate because of natural conditions that the fish can be supplied in no other practical manner except by the use of gill-nets, while still others are so situate that the fish cannot be supplied except by the use of seines; that the canneries of the defendant are so situate that seines cannot be practically used in connection with the catching of the fish canned or in connection with the furnishing of the fish supplied for its canneries, but it is obliged to resort to the use of fish-traps for that purpose.

V.

The defendant has complied with all the provisions of chapter 3, title 7, of the Compiled Laws of the Territory of Alaska relating to fish and fisheries including the provisions of sections 259 to 275-A inclusive, and has paid the license tax provided for by said sections. [22]

VI.

The defendant has not paid the tax sued for in this action for 1915, or any part thereof.

VII.

The second session of the legislature which passed the act which forms the basis of this action, to wit, chapter 76, Session Laws of Alaska, 1915, convened on the 1st day of March, 1915, at 12 o'clock noon; that on the 29th day of April, 1915, said legislature adjourned, *sine die*, at 12 o'clock midnight according to the official time-pieces of said legislature, that is to say, the clocks hanging in the halls of the two Houses of the legislature were stopped or turned back by the sergeant-at-arms just prior to the hour of 12 o'clock midnight of April 29th, 1915, and thereafter between the hours of 3 and 4 o'clock A. M., sun time, of April 30th, 1915, while the clocks in said halls of the legislature still indicated prior to midnight, being stopped or turned back as aforesaid, the said act, namely chapter 76 of the Session Laws of Alaska, 1915, was finally passed by both Houses of the legislature and approved by the Governor and was enrolled and filed in the office of the Secretary of State for the Territory as it now appears in the printed volume of Session Laws of Alaska, 1915,

chapter 76; that the Governor of the Territory of Alaska did not call an extra session to pass said act.

VIII.

Some of the said traps of defendant are worth upwards of \$10,000 and some are worth not to exceed \$1,000.

IX.

It is further stipulated that upon the filing hereof the amended complaint shall be withdrawn; that a real controversy in good faith exists between the Territory and the Defendant, as to the meaning, scope and validity of said chapter 76, and this agreement as to the facts is made for the purpose of settling said controversy without the necessity, trouble and expense of introducing evidence; that the Territory waives all claim for penalties provided in said law, and only asks judgment for the amount of the tax, and legal interest from July 1, 1915.

The above and foregoing stipulation of facts are subject to objection from either party as to their incompetency, irrelevancy or immateriality the same as might be imposed on the trial [23] to evidence tending to prove such facts.

The parties make the following legal contentions respectively:

It is contended by the plaintiff that the said chapter 76, of the Session Laws of 1915, is a valid law and that thereunder the plaintiff is entitled to have and recover of and from the defendant the sum of \$1,900 with 8 per cent interest thereon from and after July 1, 1915.

It is contended on the part of the defendant that

it is not indebted to the plaintiff in any sum whatsoever, for the reason, first, that it does not come within the provisions of chapter 76 of the Session Laws of 1915, and second, because the said last-mentioned act, and especially those provisions relied upon as the basis of this action, is and are void and invalid for the reason referred to in the answer herein, as well as for other reasons not specifically in said answer set forth.

J. H. COBB,
Chief Counsel for the Territory of Alaska.
HELLENTHAL & HELLENTHAL,
Attorneys for Defendant.

Said stipulation having been filed and presented to the Court, it was further agreed:

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1325-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES COMPANY, a
Corporation,

Defendant.

Amendment to Stipulation [of Facts].

The parties hereto agree that the stipulation heretofore filed herein and on which this case is to be tried shall be, and the same is hereby, amended by adding thereto the following clause:

“If the Court shall find, under the law, that judgment should go for plaintiff, said judgment shall be for the sum of \$1,900, with interest thereon [24] from July 1, 1915; from which judgment a writ of error or appeal may be prosecuted as provided by law.”

Dated this 20th day of November, 1915.

J. H. COBB,

Attorney for Plaintiff.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant.

[Conclusions of Law Requested by Defendant.]

Whereupon, the Court having adopted the facts as stipulated as the findings of the Court, the defendant asked the Court to conclude therefrom as a matter of law, as follows:

“Conclusion of Law No. 1, as Requested by Defendant.

That the act of the Territorial Legislature of the Territory of Alaska entitled, ‘An Act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska and for other purposes, and to amend an act entitled, “An act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska and for other purposes, approved May 1, 1913, and declaring an emergency;” which said act was approved May 29, 1915, and forms the basis of this action is inoperative, invalid and void, as far as it relates to the facts in this case.” which said conclusion of law the Court then and

there refused to adopt, then and there refusing to so conclude, to which ruling and order of the Court the defendant, by counsel, then and there excepted on the ground that said act of the territorial legislature referred to in said conclusion of law No. 1, which forms the basis of this action, is invalid and void, especially in so far as it relates to the facts in this case, for the reasons, among [25] others, enumerated in the answer herein, said act being in conflict with the provisions of the Organic Act of the Territory of Alaska, as well as the provisions of the Constitution of the United States for the reasons set out in detail in the answer, which are to be regarded as incorporated herein; and it is further invalid and void as having been passed and enacted by the territorial legislature of Alaska without authority and in violation of the limits imposed upon the authority of the legislature by the Organic Act of the Territory, providing for the legislature and defining its powers, and further for the reason that said pretended act was passed by the legislature after the period during which legislation could be enacted by the said legislature had expired and at a time when said legislature was not legally in session and had no legal status or existence, which said exception so taken by the defendant was then and there allowed by the Court.

Then and there also the Court having adopted the facts as stipulated by the parties as its findings as aforesaid, the defendant asked the Court to adopt as its conclusion of law, and conclude as a matter of law from the facts stipulated and found, as follows:

“Conclusion of Law No. 2, Requested by Defendant.

That the defendant is not indebted to the plaintiff in any sum whatsoever, and that the complaint should be dismissed and the plaintiff recover nothing by reason thereof.”

which said request made by the defendant was then and there denied by the Court, and the Court refused to adopt said conclusion or to conclude from the facts found as requested, [26] to which ruling and order of the Court the defendant, by counsel, then and there excepted on the ground and for the reason that under the facts as stipulated to by the parties and as found by the Court, it appears that the act of the legislature, which forms the basis of the action, the title of which is set out in full in conclusion of law No. 1 as proposed by defendant, is void and invalid for the reasons stated in the exception taken to the refusal of the Court to adopt said conclusion of law No. 1, as well as for the reasons stated in the answer herein and other reasons not specifically set forth, and said exception is taken on the further ground that even though said act were valid and in force it is shown conclusively by the facts as stipulated to by the parties and as found by the Court that the defendant is not liable to the plaintiff in any sum whatsoever by reason thereof, it being shown that the defendant is not engaged in any business or occupation taxed or licensed by said act and is not engaged in the business of “fish-traps,” and is not liable for any taxes or license fees due under the provisions of said act, which said exception was then and there allowed by the Court.

And the Court having found the facts as stipulated as aforesaid, the defendant then and there further asked the Court to adopt as its conclusion, and conclude as a matter of law as follows: [27]

“Conclusion of Law No. 3, as Requested by
Defendant.

That the defendant should have judgment against the plaintiff for its costs and disbursements in this behalf incurred.”

which said request so made by the defendant the Court then and there denied, to which ruling and order of the Court the defendant, by counsel, then and there excepted on the ground that under the facts as stipulated and as found by the Court the plaintiff is not entitled to recover from the defendant, but defendant is shown to be entitled to a judgment for costs against the plaintiff, the defendant being not liable to the plaintiff in the sum sued for or any other sum whatsoever, which said exception was then and there allowed by the Court.

[Findings and Conclusion of Law]

Whereupon, the Court having adopted the facts as stipulated to by the parties as the findings of the Court concluded as a matter of law as follows:

“And from the foregoing facts and stipulation the Court concludes as a matter of law that the plaintiff is entitled to judgment for the sum of \$1,963 and costs.”

to which said ruling and order of the Court in adopting the conclusion of law so adopted and concluding as a matter of law from the facts found as above set forth, the defendant, by counsel, then and there

objected on the ground that the act of the legislature of the Territory of Alaska, entitled "An act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska and for other purposes, and to amend an act entitled, 'An act to establish a system of taxation, [28] create revenue and provide for the collection thereof for the Territory of Alaska and for other purposes, approved May 1, 1913, and declaring an emergency' " the same being chapter 76 of the Session Laws of the Session of the year 1915, and being the law which forms the basis of this action, is void and invalid so far as it affects the defendant in this action and in so far as it relates to the cause of action sued upon, for the several reasons, among others set forth in detail in the answer herein and for the reason that the same is in conflict with the Organic Act of the Territory and the Constitution of the United States; that in passing and adopting the same the legislature acted beyond its authority as defined and limited in the Organic Act of the Territory creating the legislature and defining its powers; for the further reason that the pretended act above referred to was passed and adopted by the legislature after the same had, as a matter of law, adjourned and while said legislature had no existence as a legislative body, and no authority to pass or enact laws; said conclusion adopted by the Court is objected and excepted to for the further reason that even though the act of the legislature above referred to, and which is the basis of this action, should be construed as valid, the facts as stipulated to and as

found by the Court conclusively show that the defendant is not liable to the plaintiff for taxes or license fees thereunder; that the matters and things done by the defendant and charged against it, as stipulated to by the parties, and as found by the Court, conclusively show that the defendant did not do or perform any act or engaged in any [29] business or occupation that required it to pay the license fee or tax sued for, or any part thereof, or make it liable for the same, or any part thereof, which said objection so made by the defendant was then and there overruled by the Court and the Court adopted as its conclusion, the conclusion of law last above referred to, to which said objection was made, to which ruling and order of the Court the defendant, by counsel, then and there excepted on each of the grounds and for all the reasons stated in the objection to the making of said conclusion as above narrated, which exception was then and there duly and regularly allowed by the Court.

And the defendant having asked the Court to settle allow and sign the above and foregoing bill of exceptions and order the same made a part of the record herein,

**[Order Settling and Allowing Bill of Exceptions,
etc.]**

NOW, THEREFORE, it is ORDERED by the Court that the above and foregoing bill of exceptions be settled, signed and allowed as a true, full and correct bill of exceptions herein, the same having been duly presented within the time allowed therefor by the Court, and the Court hereby certifies that the

foregoing bill of exceptions contains a record of all the proceedings had herein; that no evidence was offered or received in said cause; but that the same was tried upon the facts as stipulated to by the parties, and that the foregoing bill of exceptions contains all the facts so stipulated to and all the proceedings had in this cause; it is accordingly ORDERED that the above and foregoing bill of exceptions be made a part of the record herein.

Done in open court this 9th day of December, 1915.

ROBERT W. JENNINGS,

District Judge. [30]

O K. COBB.

Filed in the District Court, District of Alaska, First Division. Dec. 9, 1915. J. W. Bell, Clerk.
By ———, Deputy.

[Endorsed]: Original. No. 1325-A. In the District Court for the Territory of Alaska, Division No. 1. Territory of Alaska, Plaintiff, vs. Alaska Pacific Fisheries, a Corporation, Defendant. Bill of Exceptions. Hellenthal & Hellenthal, Attorneys for Alaska Pacific Fisheries. Office; Juneau, Alaska.
[31]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1325—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

*United States Circuit Court of Appeals for the
Ninth Circuit, Holden at San Francisco.*

Case No. 1325-A.

ALASKA PACIFIC FISHERIES, a Corporation,
Plaintiff in Error,

vs.

TERRITORY OF ALASKA,
Defendant in Error,

Petition for Writ of Error and Allowance Thereof.

To the Honorable ROBERT W. JENNINGS, Judge
of the District Court for the Territory of
Alaska, Division Number One:

Now comes the above-named Alaska Pacific Fisheries, a corporation, the plaintiff in error herein, by its attorneys, Hellenthal & Hellenthal, and complains that in the record and proceedings had in the District Court for the Territory of Alaska, Division Number One, in the case of the Territory of Alaska, plaintiff, and defendant in error, against the Alaska Pacific Fisheries, defendant, and plaintiff in error, and also in the rendition of the judgment in said cause in the District Court for the Territory of Alaska, Division Number One, against the Alaska Pacific Fisheries on the 2d day [32] of December, 1915, wherein the District Court for the Territory of Alaska adjudged the defendant, the Alaska Pacific Fisheries, to be indebted to the plaintiff, the Territory of Alaska, in the sum of \$1,963, and wherein the plaintiff, the Territory of Alaska, was given judgment against the defendant, the Alaska

Pacific Fisheries, for the sum of \$1,963 and costs, taxed at \$——, manifest error hath happened to the great damage of said Alaska Pacific Fisheries, as will more fully appear from the assignment of errors filed herewith.

WHEREFORE the Alaska Pacific Fisheries prays for the allowance of a writ of error, and for an order fixing the amount of the bond in said cause, and for such other orders and processes as may cause the said errors to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 9th day of December, A. D., 1915.

HELLENTHAL & HELLENTHAL,

Attorneys for Alaska Pacific Fisheries.

The above petition for writ of error is allowed and the bond fixed at Two Thousand Five Hundred (\$2,500) Dollars, to be approved by the clerk of the above-entitled court.

Dated this 9th day of December, 1915.

ROBERT W. JENNINGS,

Judge. [33]

Filed in the District Court, District of Alaska, First Division. Dec. 9, 1915. J. W. Bell, Clerk.
By ———, Deputy.

[Endorsed]: Original. No. 1326-A. In the District Court for the Territory of Alaska Division No. 1. The Territory of Alaska, Plaintiff, vs. Alaska Pacific Fisheries, a Corporation, Defendant. Petition for Writ of Error and Allowance Thereof. Hellenthal & Hellenthal, Attorneys for Alaska Pacific Fisheries. Office: Juneau, Alaska. [34]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

*United Circuit Court of Appeals for the Ninth Cir-
cuit, Holden at San Francisco, California.*

Case No. 1325.

ALASKA PACIFIC FISHERIES, a Corporation,
Plaintiff in Error,

vs.

TERRITORY OF ALASKA,
Defendant in Error.

Assignment of Errors.

Comes now the Alaska Pacific Fisheries, the plaintiff in error and assigns the following errors committed by the Court in connection with the trial and rendition of judgment herein, the errors so assigned being the errors which the plaintiff in error intends to urge before the United States Circuit Court of Appeals for the Ninth Circuit, and are the errors relied upon for a reversal of the judgment herein:

FIRST ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One erred in overruling the defendant's demurrer to the plaintiff's complaint, which said demurrer was and is in words and figures as follows: [35]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

DEMURRER.

Comes now the above-named defendant and demurs to the complaint of the plaintiff herein, and for cause of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the act of the Alaska legislature, approved April 22, 1915, referred to in the complaint and upon which the alleged liability of the defendant is based, is invalid and void.

III.

That the act of the Alaska legislature approved April 22, 1915, referred to in the complaint, is in conflict with the Organic Act, the Laws of the United States and the Constitution of the United States, and is such that the Territorial Legislature did not possess the power and authority under the Organic Act to enact the same.

IV.

That the tax attempted to be laid by the act re-

ferred to in the complaint is not uniform upon the same class of subjects in this that an attempt is made to tax fish-traps and gill-nets while seines are not taxed. Thereby imposing a burden on those fishing by means of traps and gill-nets, not imposed upon those fishing by means of seines, and the act is for that reason void to the extent that fish-traps are sought to be taxed.

V.

That the act referred to in the complaint is void for the reason that it is an attempt to lay and collect a tax without any reference to the value of the thing taxed, contrary to the provisions of the Organic Act in that regard.

VI.

That the tax imposed by the act, referred to [36] in the complaint, is in fact a specific tax on property, and as such is levied without any reference to the value of the property sought to be taxed, to wit, the fish-traps, contrary to the provisions of the Organic Act in that regard.

HELLENTHAL & HELLENTHAL,

Attorneys for Defendant.

SECOND ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in failing and refusing at the request of the plaintiff in error, The Alaska Pacific Fisheries, to conclude as a matter of law from the facts found and to adopt as its conclusion of law conclusion of law No. 1 as requested by the defendant, which is in words and figures as follows:

“CONCLUSION OF LAW NO. 1, AS REQUESTED
BY DEFENDANT.

That the act of the territorial legislature of the Territory of Alaska entitled, ‘An act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska, and for other purposes, and to amend an act entitled, “An act to establish a system of taxation, create revenue and provide for the collection thereof for the Territory of Alaska and for other purposes, approved May 1, 1913, and declaring an emergency,” ’ which said act was approved May 29, 1915, and forms the basis of this action is inoperative, invalid and void, as far as it relates to the facts in this case.’

THIRD ERROR ASSIGNED.

That the District Court, for the Territory of Alaska, Division Number One, erred in failing and refusing at the request of the plaintiff in error, the Alaska Pacific Fisheries, to conclude as a matter of law from the facts [37] found and to adopt as its conclusion of law conclusion of Law No. 2 as requested by the defendant, which is in words and figures as follows:

“CONCLUSION OF LAW NO. 2, AS REQUESTED
BY DEFENDANT.

That the defendant is not indebted to the plaintiff in any sum whatsoever, and that the complaint should be dismissed and the plaintiff recover nothing by reason thereof.’

FOURTH ERROR ASSIGNED.

That the District Court, for the Territory of Alaska, Division Number One, erred in failing and refusing at the request of the plaintiff in error, The Alaska Pacific Fisheries, to conclude as a matter of law from the facts found and to adopt as its conclusion of law conclusion of law No. 3, as requested by the defendant, which is in words and figures as follows:

“CONCLUSION OF LAW NO. 3, AS REQUESTED
BY DEFENDANT.

That the defendant should have judgment against the plaintiff for its costs and disbursements in this behalf incurred.”

FIFTH ERROR ASSIGNED.

That the District Court, for the Territory of Alaska, Division Number One, erred in adopting as its conclusion of law and in concluding from the facts stipulated and found, as follows:

“And from the foregoing facts and stipulation the Court concludes as a matter of law that the plaintiff is entitled to judgment for the sum of \$1,963 and costs.” [38]

SIXTH ERROR ASSIGNED.

That the District Court, for the Territory of Alaska, Division Number One, erred in rendering judgment herein for the plaintiff in the sum specified or in any sum whatsoever.

HELLENTHAL & HELLENTHAL,
Attorneys for Alaska Pacific Fisheries.

Due service by copy of the foregoing admitted this
—— day of December, 1915.

Chief Counsel for Territory of Alaska.

Filed in the District Court, District of Alaska,
First Division. Dec. 9, 1915. J. W. Bell, Clerk.
By ———, Deputy.

[Endorsed]: Original No. 1325-A. In the Dis-
trict Court for the Territory of Alaska, Division No.
1. Territory of Alaska, Plaintiff vs. Alaska Pacific
Fisheries, a corporation, Defendant. Assignment
of Errors. Hellenthal & Hellenthal, Attorneys for
Alaska Pacific Fisheries. Office: Juneau, Alaska.
[39]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1325-A.

TERRITORY OF ALASKA,
Plaintiff,
vs.

ALASKA PACIFIC FISHERIES,
Defendant.

*United States Circuit Court of Appeals for the
Ninth Circuit, Holden at San Francisco.*

Case No. 1325-A.

ALASKA PACIFIC FISHERIES, a Corporation,
Plaintiff in Error,
vs.

TERRITORY OF ALASKA,
Defendant in Error.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS that We, the Alaska Pacific Fisheries, a corporation, as principal, and B. M. Behrends, as surety, are held and firmly bound unto the above-named Territory of Alaska, in the just and full sum of two thousand five hundred (\$2,500) dollars to be paid to the said Territory of Alaska, its attorneys or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 9th day of December, A. D. 1915.

WHEREAS, lately in the District Court for the Territory of Alaska, Division Number One, in an action therein pending between the Territory of Alaska, as plaintiff, and the Alaska Pacific Fisheries as defendant, a judgment was [40] rendered against the said Alaska Pacific Fisheries for the sum of \$1,963 and costs, and the said Alaska Pacific Fisheries having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid action and the citation directed to the said Territory of Alaska, citing and admonishing it to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within thirty days from the date of approval of this bond,

Now the condition of the above obligation is such that if the said Alaska Pacific Fisheries shall prose-

cute said writ of error to effect and answer all damages and costs if it fail to make its said plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

ALASKA PACIFIC FISHERIES.

By J. A. HELLENTHAL,

Its Attorneys, Principal.

B. M. BEHREND'S,

Surety.

Signed, sealed and delivered in the presence of:

M. CASEY.

GUY McNAUGHTON.

The above and foregoing supersedeas and cost bond is hereby duly approved, not only as to form, but also as to the surety thereon, this 9th day of December, 1915.

ROBERT W. JENNINGS,

Judge of the District Court for the Territory of Alaska, Division Number One.

Filed in the District Court, District of Alaska, First Division. Dec. 9, 1915. J. W. Bell, Clerk.
By ————— Deputy.

[Endorsed]: Original No. ——. In the District Court for the Territory of Alaska, Division No. 1. Territory of Alaska, Plaintiff vs. Alaska Pacific Fisheries, a Corporation, Defendant. Bond on Writ of Error. Hellenthal & Hellenthal, Attorneys for ————. Office: Juneau, Alaska. [41]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

*United States Circuit Court of Appeals for the Ninth
Circuit Holden at San Francisco.*

Case No. 1325—A.

ALASKA PACIFIC FISHERIES, a Corporation,
Plaintiff in Error.

vs.

TERRITORY OF ALASKA,
Defendant in Error.

Writ of Error.

United States of America,—ss.

The President of the United States of America to
the Honorable ROBERT W. JENNINGS, Judge
of the District Court for the Territory of Alaska,
Division Number One, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea, which is in
said District Court, Division Number One thereof,
before you, between the territory of Alaska, as
plaintiff, and the Alaska Pacific Fisheries, a corpora-
tion, as defendant, a manifest error hath lhappened
to the great prejudice and damage of the said Alaska
Pacific Fisheries as set forth and appears by the
petition herein,

We, being willing that error, if any hath happened,
should be duly corrected and full and speedy jus-
tice done to the parties aforesaid in this behalf, do
command you, if judgment be therein given, that
then under your seal distinctly and openly you send

the records and proceedings aforesaid with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, [42] in the city of San Francisco, in the State of California, together with this writ, so as to have the same at said place and said circuit on or before thirty days from the date hereof that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 9th day of December, A. D. 1915.

Attest my hand and the seal of the District Court for the Territory of Alaska, Division Number One, at the clerk's office at Juneau on the day and year last above written.

[Seal]

J. W. BELL,

Clerk of the District Court for the Territory of Alaska, Division No. 1.

Allowed this 9th day of December, A. D. 1915.

ROBERT W. JENNINGS,

Judge.

Due service of the within and foregoing writ of error is acknowledged this 9th day of December, A. D., 1915.

J. H. COBB,

Chief Counsel for the Territory of Alaska. [43]

[Endorsed]: Original. No. 1325-A. In the District Court, for the Territory of Alaska, Division

No. 1. The Territory of Alaska, Plaintiff, vs. Alaska Fisheries, a Corporation, Defendant. Writ of Error. Filed in the District Court, District of Alaska, First Division. Dec. 9, 1915. J. W. Bell, Clerk. By ————— Deputy. [44]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Case No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

*United States Circuit Court of Appeals for the Ninth
Circuit Holden at San Francisco.*

ALASKA PACIFIC FISHERIES, a Corporation,
Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

No. 1325-A.

Citation on Writ of Error.

The President of the United States to the Territory of Alaska, the Above-named Plaintiff, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty

(30) days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Division Number One, wherein the Alaska Pacific Fisheries, a corporation, is the plaintiff in error and you, the said Territory of Alaska, are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should [45] be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 9th day of December, A. D., 1915, and of the Independence of the United States the 139th.

ROBERT W. JENNINGS,
Judge.

Due and personal service of the foregoing citation is hereby admitted on behalf of the Territory of Alaska, defendant in error, this 9th day of December A. D., 1915.

J. H. COBB,
Attorney for said Defendant in Error. [46]

[Endorsed]: Original. No. 1325-A. In the District Court for the Territory of Alaska, Division No. 1. The Territory of Alaska, Plaintiff, vs. Alaska Pacific Fisheries, a Corporation, Defendant. Citation on Writ of Error. Filed in the District Court, District of Alaska, First Division. Dec. 9, 1915. J. W. Bell, Clerk. By ———, Deputy. [47]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

No. 1326-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,
Defendant.

Memorandum Opinion on Demurrer. [48]

By act approved April 29, 1915, the legislature of Alaska provided as follows:

“Section 1. That any person, firm or corporation prosecuting or attempting to prosecute any of the following lines of business in the Territory of Alaska, shall apply for and obtain a license and pay for said license, for the respective lines of business as follows:

.
8. Fish-traps, fixed or floating, \$100 per annum.
So-called dummy traps included.”
.

It also provided in Section 2 that

“Every person, firm or corporation desiring

to engage in any of the lines of business specified in section 1, shall first apply to and obtain from the territorial treasurer a license. If the tax for the license applied for is a fixed sum, the amount of such license tax shall accompany the application.”

Said section 2 further provided for the bringing of a suit, either civil or criminal, to collect the license, and section 4 of the said act provided:

“Special remedies provided by this act . . . shall not be deemed exclusive, and any appropriate remedy, either civil or criminal or both, may be invoked by the territory in the collection of all taxes; and in civil actions the same penalties may be collected as are herein provided in criminal actions.”

Under the provisions of this act of the legislature, the Territory of Alaska brought suit against the defendant, alleging in the complaint—

“That during the month of June, 1915, and continuously up to the present time the defendant was engaged in and prosecuting and attempting to prosecute the business of fishing by means of fish-traps situate in the waters of Alaska, and that it has failed, neglected and refused to pay the license tax, or any part thereof, provided for by said act of the legislature. Wherefore the territory asks for judgment for the amount of the license tax due.”

To this a demurrer has been interposed, on the ground that the said complaint does not state facts sufficient to constitute a cause of action; and in sup-

port of the demurrer the point is raised that the legislature had no power to impose such a tax, for the reasons— [49]

1. Congress has reserved to itself the exclusive control of the fish and game in Alaska.

2. The said tax is in violation of section 9 of the Organic Act of the Territory (Act of June 26, 1906, aforesaid), which provides:

“All taxes shall be uniform upon the same class of subjects, and shall be levied and collected under general laws, and the assessment shall be according to the actual value thereof.”

As to the first point raised in support of the demurrer, to wit: “Congress has reserved to itself the exclusive control of the fish and game of Alaska”; it is urged that by the act approved June 26, 1906, (34 Stat. L. 478) Congress provided:

“That every person, company or corporation carrying on the business of canning, curing or preserving fish, or manufacturing fish products within the Territory known as Alaska . . . shall, in lieu of all other license fees and taxes therefor and thereon, pay a license tax on their said business and output as follows:

Canned Salmon, 4¢ per case;

Pickled Salmon, 10¢ per barrel;

Salt Salmon in bulk, 5¢ per 100 pounds;

Fish Oil, 10¢ per barrel;

Fertilizer, 20¢ per ton;

and that the Organic Act of the territory, passed six years after the act of 1906, and which provides:

“That the power of the legislature should not extend to the fish laws . . . or to the laws

of the United States providing for taxes on business and trade; provided, further, that this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses” (C. L. 1913; Sec. 421.)

should be taken to mean that the legislature is not prohibited from imposing other and additional licenses or taxes “on other kinds of industries and on other kinds of business or trade not covered by the act of 1906.”

The reasoning advanced why the Court should so hold is not convincing on the contrary, as the Organic Act is the latest expression of the legislative will on the subject, it would seem that it must be taken as repealing that part of the former act which is in conflict therewith, to wit: “shall in lieu of all other license fees and taxes.” For the Court to hold that the [50] later act does not repeal the former act to the extent indicated, it would be compelled to read into the later act some words which are not there, to wit: “On other kinds of industries and on other kinds of business or trade not covered by the act of 1906.” This would not be justified by any canon of construction. The very position of the proviso in the statute shows what Congress had in mind, to wit, that in imposing other and additional licenses or taxes the legislature should not be fettered by anything contained in the act of 1906. It is not apparent that there is any need of construction, for the language is plain and unambiguous. A reference to the debates in Congress when the bill was before it would clear up any ambiguity if, indeed, any such existed.

The bill came up for argument on Wednesday, the 24th of April, 1912. In its original form the proviso was as follows:

“That the authority herein granted to the legislature to alter, amend, modify and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal or other general laws of the United States”;

and nothing was there said about the game or the fish. Whereupon the following occurred:

Mr. WILLIS.—Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Line 9, page 23, after the word “States,” insert the words “or to the game laws of the United States applicable to Alaska.”

Mr. MANN.—Why not make it game and fish laws?

Mr. WICKERSHAM.—Mr. Chairman, I think the fish laws ought to be left alone.

Mr. MANN.—Why not make it game and fish laws, so that they cannot repeal the fish laws? They can pass new fish laws.

Mr. WILLIS.—Mr. Chairman, I will accept that amendment, and ask unanimous consent that it be so modified and reported as modified.

The CHAIRMAN. — Without objection, the amendment will be so modified, and the clerk will report the amendment as modified.

The Clerk read as follows:

Line 9, page 23, after the word “States,” insert

the words "or to the game and fish laws of the United States applicable to Alaska."

Mr. WICKERSHAM.—Mr. Chairman, I do not think that the word "fish" ought to be in there. I think the fisheries in Alaska need protection. They belong to the people of the State or to the Territory, and they do not belong to the Government of the United States. They are not now being protected. They are not now being conserved, and if this legislature will do something toward conserving, and protecting the fish it ought to be allowed [51] to do it. This simply bars the legislature from protecting the fisheries in that Territory, and it ought not to be in the bill.

Mr. MANN.—The gentleman will notice this provision does not apply to passing laws, but only to the repealing of laws.

Mr. WILLIS.—It seems to me the observation of the gentleman from Illinois answers the objection of the gentleman from Alaska. It simply provides, if it shall be adopted, that the legislature of the Territory of Alaska shall not have the power to alter, amend or repeal the United States fish or game laws now in force in the Territory. It does not take away from the legislature the power to pass additional laws of that character. It seems to me that meets the objection.

Mr. WICKERSHAM.—I think they ought to be allowed to amend them.

Mr. WILLIS.—We have a Federal fish law in Alaska. The gentleman is not objecting to that.

Mr. WICKERSHAM.—No.

Mr. WILLIS.—That is all this amendment pro-

vides—that the legislature shall not have the power to amend the present fish or game laws.

Mr. WICKERSHAM.—What does that mean?

Mr. WILLIS.—It means that the present law shall stand.

Mr. FLOOD of Virginia. — Suppose Congress passes a law revising and extending the fish laws there?

Mr. WILLIS.—Well, undoubtedly that will be the paramount law of Alaska.

Mr. FLOOD of Virginia.—What will be the effect of the gentleman's amendment?

Mr. WILLIS.—The effect of this amendment will be, as I understand it, simply to take away from the legislature of Alaska the power to amend the fish or game laws now in effect in Alaska.

Mr. FLOOD of Virginia.—It would not have the effect to take away from the legislature of Alaska the power to amend the fish laws we hereafter pass?

Mr. WILLIS.—No; I do not think it would, as I have worded it, although I did not have that in mind when I drafted the amendment.

Mr. MANN.—They would not have that power?

Mr. WILLIS.—They would not have that power now.

Mr. FLOOD of Virginia.—The gentleman is aware of the fact there is a proposition to revise the fish laws?

Mr. WILLIS.—Yes; I think the bill is a good one and ought to pass.

Mr. FLOOD of Virginia.—And will in all probability become the law.

Mr. WILLIS.—It seems to me this meets the objection that has been raised in a perfectly fair manner, and I think it is a fair objection, but I do not believe the legislature ought to repeal the present game or fish laws.

Mr. MANN.—We have endeavored to provide in a way for the conservation of the fisheries and game up there. We ought not to permit those laws to be repealed, but if they want to make them more stringent, and probably do, they ought to have that right.

Mr. FLOOD of Virginia.—I do not think the amendment means anything, but if it will please anybody to put it in, why, let it go.

Mr. WICKERSHAM.—I shall withdraw my objection.

The question was taken, and the amendment was agreed to.

(Vol. 48, Part 6, page 5288, Congressional Record, 62d Congress, Second Session.)

This, however, did not seem to be specific enough for the Senate for when the bill reached that body it was amended by having added to it this provision:
[52]

“Provided further that this provision shall not operate to prevent the legislature from imposing other and additional taxes and licenses.”

The House refused to agree to this and to several other amendments, and the committee on conference of the House reported, recommending that the House recede from its disagreement to this Senate amendment. The House did recede from said disagreement, and the Senate proviso was added to the bill.

This occurred on August 20, 1912, and the record of it is found in said Congressional Record at page —.

Thus it will be seen—

1. That there is on the face of the bill no expression of any such purpose as is contended for.

2. That no such purpose as is contended for was in the minds of the legislators when the bill passed, but on the contrary what was in their minds was that the legislature should have the power to levy additional taxes on the fish and the game business and on other businesses.

As to the second point raised in support of the demurrer, to wit: “The said tax is in violation of section 9 of the Organic Act of the Territory”;

A reference to the legislation and to one Supreme Court decision on the subject of the taxation of the fisheries business in Alaska may throw some light on the subject.

By the criminal code of Alaska, adopted March 3, 1899, (C. L. 1913, Sec. 2569) Congress provided:

“That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain a license so to do from a District Court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit:

.

Fisheries: Salmon Canneries, 4¢ per case;
Salmon Salteries, 10¢ per barrel;
Fish Oil Works, 10¢ per barrel;
Fertilizer Works, 20¢ per ton."

The point was raised that this act was in violation of section 8, article 1 of the Constitution of the United States, which reads: [53]

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, . . . but all duties, imposts and excises shall be uniform throughout the United States;"

and that said act, insomuch as it directed the money to be paid into the treasury of the United States could not be sustained. The point was passed upon in the case of *Binns V. United States*, (194 U. S. 486, decided May 31, 1904), and Justice Brewer, at page 491 says:

"We shall assume that the purpose of the license fees required by section 460 is the collection of revenue, and that the license fees are excises within the constitutional sense of the terms. Nevertheless we are of opinion that they are to be regarded as local taxes imposed for the purpose of raising funds to support the administration of local government in Alaska.

It must be remembered that Congress, in the government of the territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution, that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the Territories. We are ac-

customed to that generally adopted for the territories, of a *quasi* State Government, with executive, legislative and judicial officers, and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form. In the District of Columbia it has adopted a different mode of government, and in Alaska still another. It may legislate directly in respect to the local affairs of a territory or transfer the power of such legislation to a legislature elected by the citizens of the territory. It has provided in the District of Columbia for a board of three commissioners, who are the controlling officers of the District. It may entrust to them a large volume of legislative power, or it may by direct legislation create the whole body of statutory law applicable thereto. For Alaska, Congress has established a government of a different form. It has provided no legislative body but only executive and judicial officers. It has enacted a penal and civil code. Having created no legislative body and provided for no local legislation in respect to the matter of revenue, it has established a revenue system of its own, applicable alone to that territory. Instead of raising revenue by direct taxation upon property, it has, as it may rightfully do, provided for that revenue by means of license taxes.”

And later on in the decision the learned Justice quotes the following from volume 32 Congressional Record, part 3, page 2235, to wit:

“ ‘The committee on territories have thoroughly investigated the conditions of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the government of the Territory of Alaska . . . They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which, in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the committee on territories, after consultation with prominent citizens of the Territory of Alaska, including the Governor and [54] several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them.’

While, of course, it would have simplified the matter and removed all doubt if the statute had provided that those taxes be paid directly to some local treasurer and by him disbursed in payment of territorial expenses, yet it seems to us it would be sacrificing substance to form to hold that the method pursued when the intent of Congress is obvious, is sufficient to invalidate the taxes.

In order to avoid any misapprehension we

may add that this opinion must not be extended to any case, if one should arise, in which it is apparent that Congress is, by some special system of license taxes, seeking to obtain from a territory of the United States revenue for the benefit of the nation as distinguished from that necessary for the support of the territorial government.”

Thus it will be seen that the license was declared to be a tax and was sustained as not being in contravention of the said Articles of the Constitution, on account of the fact that the money, although to be paid into the treasury of the United States, was to be used for the support of the territory—in other words, that it was a tax imposed on businesses in Alaska by Congress, the then legislative body for Alaska, for local purposes.

Then came the acts of Congress of March 30, 1906, and of March 24, 1912, *supra*.

Such being the state of Federal legislation on the subject of taxing the fishing industry in Alaska, the legislature of Alaska passed the act whose validity is here assailed.

We have seen by the Binns case that Congress when imposing a license tax system on businesses in Alaska, was not fettered by the constitutional prohibition as to uniformity. It must be conceded that Congress had plenary power over the territory—that is, that it could legislate on all rightful subjects of legislation not prohibited by the national constitution. This power it had, not so much from its constitutional power to make rules and regulations for

the government of the territory, as from its inherent power arising from the ownership of the *res*. Having this power, Congress certainly had the power to confer it upon the legislature. It is true that the powers of that legislature are limited by the act defining those powers and that in this respect a territorial legislature differs from State legislatures; that [55] is to say, the Organic Act of a territory if a grant of specific powers and not a reservation of specific powers.

Congress, when implanting this new jurisdiction in Alaska, expressly provided that the power of the Alaska legislature

“Shall extend to all rightful subjects of legislation not inconsistent with the laws of the United States, but it shall not, etc.”

Then follow exceptions too numerous to mention,—more than have obtained in the case of any other territory,—well nigh emasculating the original grant, and causing it to “speak the word of promise to the ear and break it to the hope.” However, of its pristine vigor there is left enough to justify the imposition of license taxes and property taxes. Such power finds its warrant in the principle that unless a power is forbidden to our legislature the latter possesses the power—“provided it be a rightful subject of legislation.” That is to say, Congress, ordaining for this territory an Organic Act, does a thing for the territory which in its nature but not in its extent, is similar, analogous, to what the people of a State do when they adopt a constitution for the State.

“The legislative power to be exercised by the territorial legislature is the legislative power of the territory, not that of the United States. Both states and territories, in a certain sense, derive their existence from the legislation of Congress, but the jurisdiction and authority exercised, either by a state or territory, is that of a state or territory, and not that of Congress. Territorial statutes have a distinct and well-defined character of their own. The people of a territory, when authorized to form a territorial government, are vested with a qualified sovereignty. Congress may limit their powers, and may annul their enactments, but, subject to these limitations, the territory is a government. Its laws, unless set aside by Congress or the courts, are the laws of the territory; they are not laws of the United States, within the ordinary meaning of those terms; certainly not in the sense that the acts of Congress, approved by the president, are laws of the United States.”

(16 Fed. 715.)

This being true, the inquiries are these:

(a.) When the legislature imposed this license tax, was it exercising power over a rightful subject of legislation? If it was not so exercising power, the enactment must fall; if, however, it was so exercising power, the enactment must stand, *unless* it violates some other provision of the constitution, (Organic Act.) [56]

That the power to raise revenue by levying a license tax on business pursuits is “a rightful subject of legislation” will hardly be denied.

25 Cyc. p. 599, Sec. 3, and cases cited in Note 16.

(b) Pursuing the argument, then: Such power, being a rightful subject of legislation, exists in the legislature of this Territory unless there is some provision in the Organic Act which negatives the power. If there is any such provision, where is it to be found?

Counsel for defendant affects to find it in that provision of the Organic Act which declares that "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the value thereof. No taxes shall be levied for territorial purposes in excess of one per centum upon the assessed valuation of the property therein in any one year."

If this uniformity requirement applied to anything except direct property taxes the argument might prevail—but that in fact it does apply exclusively to direct property taxes and to nothing else has been decided so often as to be beyond cavil.

25 Cyc. p. 605–6, and cases cited.

"The constitutions of many of the states contain the requirement that taxation shall be equal and uniform, that all property in the state shall be taxed in proportion to its value, that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, or that the legislature shall provide for an equal and uniform rate of assessment and taxation; and in the face of such provisions a tax law which violates the

prescribed rule of equality and uniformity is invalid, although there is sufficient difference in the wording of the different provisions to account for some lack of uniformity in the decisions as to what constitutes a violation of their requirements. The requirement does not apply to every species of taxation, and does not restrict the legislature to the levying of taxes upon property alone. The restriction relates only to the rate or amount of taxation and its incidence upon taxable persons and property, and does not limit the legislature in regulating the mode of levying and collecting the taxes imposed, and it also relates only to property within the state, and neither the statutes of another state nor the action of its taxing officers can affect the question. In the absence of such a constitutional requirement it is not essential to the validity of taxation that it shall be equal and uniform, and in such a case a tax law cannot be declared unconstitutional merely because it operates unequally, unjustly, or oppressively. [57]

The requirement of equality and uniformity applies only to taxes in the proper sense of the word, levied with the object of raising revenue for general purposes, and not to such as are of an extraordinary and exceptional kind, or to local assessments for improvements levied upon property specially benefited thereby, or to other burdens, charges, or impositions which are not properly speaking taxes; and further,

such a constitutional provision is to be restricted to taxes on property, as distinguished from such as are levied on occupations, business, or franchises, and on inheritances and successions, and as distinguished also from exactions imposed in the exercise of the police power rather than that of taxation.

The principle of equality and uniformity does not require the equal taxation of all occupations or pursuits, nor prevent the legislature from taxing some kinds of business while leaving others exempt, or from classifying the various forms of business, but only that the burdens of taxation shall be imposed equally upon all persons pursuing the same avocation, or that if those following the same calling are divided into classes for the purposes of taxation, the basis of classification shall be reasonable and founded on a real distinction, and not merely arbitrary or capricious. To this extent also, and no further, the principle applies to license fees or taxes imposed under the police power or for the better regulation of occupations supposed to have an important public aspect."

(37 Cyc. p. 729-33.)

It is argued that the legislature has only such powers of taxation as is conferred by section 9 of the Organic Act—but this is a mistake. It is true that that section expresses the limit of its powers as to direct property taxation, but it is elsewhere granted the express power to raise revenue by license taxes (C. L. 1913, S. 410), and as a matter of

fact that is the only method of taxation which the Legislature has adopted.

It is said that the system of taxation adopted is the exercise of special and not general legislation—This position is untenable. See *Codlin v. Kohlhausen*, 58 P. R. 499.

It is said that there has been no assessment, but

“The cardinal rule in taxation that whenever a tax is to be fixed by assessment the due assessment must precede any valid claim of such tax does not apply to license taxes, except where the statute expressly so provides, or where the tax is according to value, or depends upon the ascertainment of person or value by some designated official.”

(25 Cyc. p. 628.)

It is said that the fact that a lien on the property is reserved for the taxes shows that this is a property tax, but

“In order to accomplish the certain collection of license taxes, the statute may declare that such taxes shall be a lien on the property assessed and entitled to be paid in preference to all mortgages and encumbrances.”

(25 Cyc. p. 628.) [58]

It is said that there is no such business or line of business as fish-traps and that that fact, together with the fact that dummy traps are included, is proof positive that this is a property tax pure and simple—a tax on the *res* and not on the business. A dummy trap is a sham trap not used for fishing but designed simply to squat on and hold a trap lo-

cation. None of the traps in question are dummy traps. The complaint seeks to recover the license tax from "fishing" traps, and if the tax on them is valid it would not matter that the tax on dummy traps is invalid.

It is true there is no such business or line of business as fish-traps, but this is a mere "inaptitude of expression." The meaning is plain when the language is read in connection with that knowledge of the fishing business (one of the main enterprises of Alaska) common to all our people and of which the legislature will not be considered ignorant and of which the Court will take judicial notice. The legislature meant that whoever conducts the business of fishing by means of fish-traps must pay the license required by law. Although taxation statutes are to be strictly construed against the taxing power, yet they are to be construed to mean something, if possible, and are not to have their vitality frittered away by technical refinements.

Cyc.

The demurrer in each case will be overruled.

ROBERT W. JENNINGS,

Judge. [59]

Filed in the District Court, District of Alaska, First Division. Aug. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

[Endorsed]: No 1325-A. In the United States District Court for the District of Alaska. Division No. One. The Territory of Alaska, Plaintiff, vs. Alaska Pacific Fisheries, a Corporation, Defendant. Memorandum Opinion. [60]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Defendant.

No. 1326-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,
Defendant.

Opinion.

In its opinion rendered on the occasion of overruling the demurrer to the complaint in this cause, the Court decided in favor of plaintiff all the questions now presented (at the trial hereof) except

1. The question as to whether or not the term of the legislature had expired when chapter 76, Laws of the Alaska legislature of 1915 was passed;

2. The question as to whether or not the catching of fish to be canned and then sold is “engaging in the fishing business”;

and those two questions will be now considered.

(1) The Organic Act (sec. 413 Compiled Laws of Alaska, 1913) provides:

“That the legislature of Alaska shall convene at the capitol at the city of Juneau, Alaska, on the first Monday in March in the year nineteen hundred and thirteen, and on the first Monday in March every two years thereafter; but [61] the said legislature shall not continue in session longer than sixty days in any two years unless again convened in extraordinary session by proclamation of the Governor.”

By the stipulation of facts it appears that the legislature convened on the 1st day of March, 1915, at 12 o'clock noon. By the Organic Act it is not to continue in session longer than 60 days in any two years. By the stipulation it also appears that the act in question “was finally passed by both Houses of the legislature and approved by the Governor and was enrolled and filed in the office of the Secretary of State for the Territory as it now appears in the printed volume of the Session Laws of Alaska for 1915—Chapter 76.”

Conceding, for the sake of argument only, that that clause of the stipulation does not settle the matter and preclude any further inquiry, this question arises: At what time did the 60 days mentioned in the Organic Act expire?

There seems to be a conflict of authorities as to whether or not Sundays and holidays are to be included in counting the sixty days. The cases of *Cheyney vs. Smith*, 23 P. R. 680 (Ariz.), of *Moog vs. Randolph*, 77 Ala. 608, and some others, hold to the negative: In the dissenting opinion in the Arizona case some authorities holding to the affirmative are

collected; and in an opinion dated March 16, 1889, given by Attorney General Miller to the Secretary of the Interior that official distinctly held that Sundays and holidays are to be counted as days of the session; (Vol. 19, p. 259, Opinions of Attorneys General); but however, this may be, the Alaska legislature of 1915, convened at noon on the 1st day of March, 1915, and adjourned *sine die* between 3 and 4 o'clock A. M. (sun time), on April 30, 1915, (see stipulation); so that even counting Sundays and holidays, it did not continue in session longer than 60 days; for the full [62] period of sixty days did not expire until noon of the 60th day—that is noon of April 30, 1915.

White vs. Hinton, 17 L. R. A. 66 (Wyo.).

As to the second question: defendant contends that the catching of the fish is a mere adjunct of the canning business, without which the latter cannot or does not exist; That it is not engaged in the business of fishing but in the business of canning, and that by act of Congress approved June 26, 1906, (34 Stats. at Large, 478) it was provided that the tax therein prescribed for carrying on the business of canning shall be “in lieu of all other license fees and taxes therefor and thereon.” The argument, if carried out logically, would result in the proposition that Congress itself having said that the license tax provided in the act shall be in lieu of all other license fees and taxes, could not by a later law impose for the future a license larger in amount than that which was imposed by the former act, or tax the different branches or instrumentalities

of the canning business. Such a proposition is untenable, for the power of Congress is plenary in the matter. What Congress could do in this matter the territorial legislature can do, for the power of the latter extends to "all rightful subjects of legislation" not forbidden by the Organic Act (Organic Act, Sec. 416), and "except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended or repealed by Congress or by the legislature" (Organic Act, C. L. 410); and "Provided further: That this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses." As Congress, then, could provide that all persons catching fish for canning shall pay a certain license tax, and all persons canning the captured fish shall pay [63] and additional license tax, so the legislature also may provide the same thing. Now, that is just what the legislature has done by the act in question: It has provided that all persons in the business or line of business of catching fish by means of fish-traps (whether or not they catch the fish for canning purposes) shall pay \$100, and all persons canning the captured fish (whether the fish are caught in traps or nets or seines) shall pay 4 cents per case, etc.—in other words, a license tax for catching and a license tax for canning.

Findings and judgment for plaintiff as per stipulation.

Judge.

Filed in the District Court, District of Alaska,
First Division, Nov. 30, 1915. J. W. Bell, Clerk.
[64]

**[Certificate of Clerk U. S. District Court to Tran-
script of Record.]**

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

United States of America,
District of Alaska,
Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached sixty-four pages of typewritten matter, numbered from 1 to 64, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorneys for defendant and plaintiff in error, on file in my office and made a part hereof, in Cause No. 1325-A, wherein the Territory of Alaska is plaintiff and defendant in error and Alaska Pacific Fisheries, a corporation, is defendant and plaintiff in error.

I further certify, that the said record is by virtue of the writ of error and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Twenty-nine and 85/100 Dollars (\$29.85) has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the above-entitled court this 10th day of December, 1915.

[Seal] J. W. BELL,
Clerk of the District Court, for the District of
Alaska, Division No. 1. [65]

[Endorsed]: No. 2709. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Pacific Fisheries, a Corporation, Plaintiff in Error, vs. The Territory of Alaska, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed December 18, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer
Deputy Clerk.